

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARIO JOSEPH BARDO,
Petitioner,

v.

KEN CLARK, Warden,
Respondent.

Case No. 19-00759 BLF (PR)

**ORDER DENYING MOTION TO
COMPEL AND FOR SANCTIONS;
GRANTING MOTION FOR
EXTENSION OF TIME TO FILE
OPPOSITION; REQUESTING
FORMER COUNSEL TO RESPOND**

(Docket Nos. 28, 31)

Petitioner, a California state prisoner, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 with the assistance of counsel. On October 28, 2019, the Court granted Petitioner's motion to dismiss counsel of record and reopened the matter to permit Petitioner an opportunity to file an opposition to Respondent's motion to dismiss the petition for failure to exhaust state court remedies. Dkt. Nos. 20, 23.

When Petitioner filed a response stating that he had not received any files from his former counsel, the Court granted his request to have counsel provide him with all records relevant to this case in an order filed December 4, 2019. Dkt. No. 25. Counsel was requested to file notice with the Court within twenty-eight days of the order that he had provided Petitioner with all the relevant papers in this matter. *Id.* Petitioner was granted an extension of time to file an opposition, such that his brief was due no later than January

1 29, 2020. *Id.*

2 On January 27, 2020, Petitioner filed a motion for an extension of time to file
3 opposition, asserting that counsel had not filed notice with the Court as directed and that he
4 still had not received any documents to proceed with this case. Dkt. No. 26. On January
5 31, 2020, former counsel filed notice that he mailed the entire file in this matter in
6 November 2019, to Petitioner at Corcoran State Prison (“CSP”) where he believed
7 Petitioner was confined. Dkt. No. 27. Although it appeared to the Court that Petitioner
8 should have received the court files well before the deadline, Petitioner was granted
9 another extension of time on February 5, 2020, giving him an additional twenty-eight days
10 from the order to file an opposition. Dkt. No. 28.

11 On March 18, 2020, Petitioner filed a motion to compel and for sanctions against
12 former counsel, stating that he has long since been transferred to the California Substance
13 Abuse Treatment Facility and therefore never received the documents that were sent to
14 CSP. Dkt. No. 29. On March 20, 2020, Petitioner also filed a motion for an extension of
15 time to file opposition, asserting that counsel has still not complied with the Court’s order
16 to provide all relevant papers in this matter. Dkt. No. 31.

17 Because former counsel is not a party to this action, the Court has no jurisdiction to
18 compel or impose sanctions on him. Accordingly, the motion to compel is DENIED.
19 However, in the interest of justice, the Court shall order the Clerk to forward a copy of this
20 order to former counsel,¹ and request counsel to send Petitioner another copy of the
21 relevant record to Petitioner’s current place of confinement and file notice with the Court
22 of his response.

23 Good cause appearing, Petitioner’s motion for an extension of time is **GRANTED**.
24 Petitioner’s opposition shall be filed **no later than twenty-eight (28) days** from the filing
25

26 _____
27 ¹ Counsel’s law office is indicated on his notice to the Court under Docket No. 27.
28

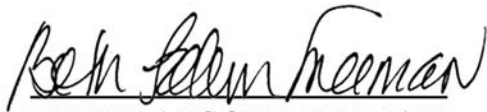
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

date of this order.

This order terminates Docket Nos. 28 and 31.

IT IS SO ORDERED.

Dated: March 30, 2020


BETH LABSON FREEMAN
United States District Judge